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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,700	06/21/2001	Ronald E. Highsmith	H0001321	5968

7590 05/15/2007
Margaret S. Millikin
Honeywell International Inc.
15801 Woods Edge Road
Colonial Heights, VA 23834

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

MAIL DATE	DELIVERY MODE
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05/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/886,700

Applicant(s)

HIGHSMITH ET AL.

Examiner

Alton N. Pryor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-18 is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Applicant's arguments filed 2/19/07 have been fully considered but they are not persuasive. See argument below.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-9 remain rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for stable agricultural solid suspensions comprising ammonium sulfate, diammonium phosphate or the isopropylamine salt of N-(phosphonomethyl)glycine, does not reasonably provide enablement for stable agricultural suspensions comprising all agricultural compounds. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Note agricultural actives differ structurally and their structures determine their chemical and physical nature. Their chemical and physical nature affects their interaction with other components such as methylthio-alpha-hydroxybutyric acid, instant nonionic surfactants and water-soluble glycol liquids. For this reason it is unbelievable on its face that all agricultural actives would possess chemical and physical chemicals that would allow for the production of a stable solid suspension once combined with methylthio-alpha-hydroxybutyric acid, instant nonionic surfactants and water-soluble glycol liquids.

Response to Applicant's Argument

Applicants argue:

1. The Examiner has rejected claims 1-9 under 35 USC 112, first paragraph as lacking enablement.
2. Examiner has provide no prior art and fact basis for the assertion that claim 1 is non-enabling for "all agricultural actives" such as those listed in claim 1 (namely fertilizer, combination of adjuvant and herbicide, herbicide, and pesticide) would possess chemical and physical properties that would allow for the production of a stable solid suspension once combined with components (b) – (d) of claim 1. Applicant requests that Examiner provide an affidavit under 37 CFR 1.04(d)(2) attesting to the facts to his knowledge, which were relied upon in his concluding that, the present claim lack enablement.
- 3 The enablement requirement of 35 USC 112 is met as long as the specification discloses at least one method for making and using the claimed invention that bears a reasonable correlation to the entire scope of the claim.
4. The present claims are only to stable agricultural solids suspensions which are formed from the disclosed components, and not to ingredients which might fail to qualify as stable solid suspensions.

Examiner's response:

For clarification purposes the Examiner did not reject the claims under 35 USC 112, 1st paragraph as lacking enablement, but rather under 35 USC 112, 1st paragraph scope of enablement. In a scope of enablement rejection a reference may or may not be provided. In others words it is not a requirement that the Examiner provides a reference to support his or her position. Therefore, it is also not required that the Examiner provides an affidavit under 37 CFR 1.04(d)(2). In the scope rejection provided by the Examiner, scientific reasoning is used that can be gather from an organic chemistry. The claim is to combining an agrichemical (pesticide, herbicide, etc.) with ingredients (b)-(d) recited in claim 1 to form a stable solid dispersion. Examiner understands that applicant has support and data in the specification for the formation of a stable solid suspension comprising ammonium sulfate, ammonium phosphate, or glyphosate as agrichemicals once combined with ingredients (b)-(d) in claim 1. However, the Examiner brings to the attention of the applicants that their limited number of 3 agrichemicals shown to do this can not serve as a template to assert that the millions of other agrichemical will also formulate into a stable solid suspension once combined with ingredients (b) – (d). To support this statement the Examiner relies on knowledge that can be obtained from any organic chemistry textbook. The knowledge is that different agricultural chemicals vary in chemical and physical properties. The chemical and physical properties of an agrichemical will directly affect the solubility, polarity, lipophobic nature, lipophilic nature, hydrophilic nature, hydrophobic character, noncovalent nature, covalent nature and ionic character of the agrichemical. Roberts et al, Basic Principles of Organic Chemistry, 2nd edition, W. A. Benjamin, Inc., 1977 and

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1964. Since many agrichemicals differ chemically and physically from the actual agrichemicals tested in the specification, more than likely they will not interact with ingredients (b) – (d) in the manner as the 3 agrichemicals tested in the specification. The Examiner understands that Applicant attests that claim 1 is to ingredients that will result in a stable solid agrichemical composition and not to a combination of chemicals which would not yield the stable solid suspension. Examiner agrees with the Applicant's interpretation of the claim. However, Applicant's interpretation does not remove the burden of experimentation for the artisan to determine which of the millions of agrichemicals would formulate into a solid stable suspension. From the testing of the 3 agrichemicals disclosed in the specification an artisan cannot correlate to the entire scope of the claims (since there exists millions of agrichemical and many of them will not produce a stable solid suspension). For the above reasons the 35 USC 112, 1st paragraph scope of enablement rejection is maintained. Note that claims 10-18 have been moved from this rejection since the claims are to ammonium sulfate as the agrichemical.

Allowable Subject Matter

Claims 10-18 are allowable. The prior art does not teach or suggest a stable solid suspension comprising ammonium sulfate and methylthio-alpha-hydroxybutyric acid.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Alton Pryor', with a stylized flourish at the end.

Alton Pryor
Primary Examiner
AU 1616